

1 We wanted to do more promotions, that kind of thing, and
2 they weren't getting done.

3 And I feel that it was a way to get some of those
4 things done, to actually have a spokesperson, not only for
5 the good things that were going on at WRBR, but also to work
6 in conjunction with our programming consultant, Mr. Moore.

7 Q Also at that time you assumed some, if I recall
8 you said not many, but some duties at WBYT for a brief
9 period of time?

10 A By title, but nothing really major that I can even
11 recall. Because as I pointed out before, most of my energy
12 was focused on still trying to do a high calibre morning
13 show. Mornings are the most important day part at a radio
14 station.

15 Q Right.

16 A And I wanted to do the best I could.

17 Q But prior to that point, you were working only for
18 WRBR; is that correct?

19 A That's correct.

20 Q Did you apply, have to reapply to become employed
21 again in connection with WBYT?

22 A No, sir.

23 Q Now, in connection with your contacts with Mr.
24 Hicks during the period prior to the format change, when you
25 were assistant program director, who frequently did you

1 interact with Mr. Hicks?

2 A None that I can recall.

3 Q So your interactions did not begin to a
4 substantial degree until the format change?

5 A That's correct.

6 Q And how often since the format change do you have
7 contact with Mr. Hicks?

8 A Weekly, twice a week; sometimes more than that,
9 depending on what's going on at the radio station,
10 especially when we're in a ratings period, as we are right
11 now. I like to make sure he knows exactly what's going on
12 to every detail so he's on top of everything. And, of
13 course, I always welcome his input as well. Could we be
14 doing something better, that sort of thing.

15 Q How often is that contact face to face? How often
16 does he come to the station?

17 A Once in awhile. I'd say once every -- once or
18 twice a month, let's say.

19 Q And you say you have a lot of contact by e-mail?

20 A Yes, sir.

21 Q Do you save that e-mail?

22 A Sometimes, yes. Sometimes, no.

23 Q Do you know whether -- were you asked, in
24 connection with this proceeding, to produce any documents?

25 A No, sir.

1 Q Do you know whether any of your e-mails between
2 yourself and Mr. Hicks have been produced in discovery in
3 this proceeding?

4 A No, sir.

5 Q Now, prior to the format change in conjunction
6 with the Bob and Tom show, was there any thinking about
7 changing the format from the oldies format to some other
8 format?

9 A Prior to the actual --

10 Q Prior to the time when Bob and Tom became
11 available.

12 A None that I would know of.

13 Q What was your opinion of the oldies format?

14 A It was fun. I enjoyed it. But after playing the
15 same songs over and over again, as I pointed out earlier, it
16 is -- it kind of gets tedious after awhile, but then the
17 professional part of me steps in and says, you know, you've
18 introduced this song a million times, find another creative
19 way of doing it. So it didn't bother me. I enjoyed doing
20 it.

21 Q Do you know whether it was effective in terms of
22 producing revenue?

23 A I wouldn't have that knowledge.

24 Q Now, I believe you testified that Mr. Hicks keeps
25 tabs on the news being broadcast on WRBR; is that correct?

1 A Yes, sir.

2 Q How does that occur?

3 A Through his input. When we communicate either
4 face to face, phone, e-mail, whichever, from time to time
5 he'll ask me has the news been broadcast the way we want it,
6 yes or no. And if not, you know, he advise me to do
7 something about it, or he may look into it himself.

8 Q What type of things has he advised you to do?

9 A Mostly to make sure we have good local content.
10 Since we are a South Bend radio station, we want to have
11 South Bend information.

12 We've spoken before in terms of sports, what kind
13 of local sports can we talk about. Notre Dame being in
14 South Bend, everyone can talk about Notre Dame, but what
15 about the high schools, how are they doing, what's going on
16 there. Just to make sure we have a well rounded
17 presentation.

18 Q And how long has that been going on? Has that
19 been continuous since you were involved in the news at WRBR
20 that Mr. Hicks has had that level of involvement?

21 A At least since I've been program director. That I
22 can say.

23 MR. BOYCE: We have no further questions, Your
24 Honor. But we do note that Mr. Goldbach has indicated there
25 may be e-mails. As far as I am aware, they were not

1 produced in discovery in this proceeding, and I would wonder
2 if Mr. Goldbach could check his records to see what e-mails
3 he may have that confirm his testimony.

4 JUDGE CHACHKIN: Do you have records, e-mails from
5 Mr. Hicks?

6 THE WITNESS: Yes, sir, I do keep most of them.
7 There may be a few that I don't have, but I do have several.

8 JUDGE CHACHKIN: All right, then I'll direct Hicks
9 to make copies available to the Bureau.

10 MR. HALL: We'll do it, Your Honor.

11 JUDGE CHACHKIN: Any redirect?

12 MR. CRISPIN: I just have a few questions.

13 JUDGE CHACHKIN: Go ahead, Mr. Crispin.

14 CROSS-EXAMINATION

15 BY MR. CRISPIN:

16 Q Mr. Turner, is there something about the Bob and
17 Tom Show that uniquely lends itself to a rock format?

18 A Not necessarily.

19 Q Now, you said that the show originated in
20 Indianapolis, correct?

21 A Yes, sir.

22 Q Is there a lot of country music in the southern
23 portion of Indiana?

24 MR. HALL: Objection. Indianapolis is not in the
25 southern portion of Indiana. I think your geographies are

1 screwed up. Being from the southern part of Indiana, I --

2 BY MR. CRISPIN:

3 Q Well, Mr. Turner, does the Bob and Tom Show run on
4 country formatted radio stations?

5 A I know of one.

6 Q Does it run on others?

7 A I'm not sure. They have over 70 stations now.
8 I've long lost track of what formats they are on.

9 Q Now, when you made your recommendation, and are
10 you -- and I just want to get this straight. Are you taking
11 credit for originating the idea of the Bob and Tom Show on
12 WRBR?

13 A No, sir. I am not taking credit for it.

14 Q I mean, was it -- fairly stated, was it your idea
15 or do you give that credit to someone else?

16 A I couldn't -- I couldn't say.

17 Q I really don't know. It was -- as I pointed out
18 earlier, it was my opinion that it was a really good show.
19 Had someone been thinking about acquiring it prior to me
20 thinking of it, I could not say. I don't know.

21 Q Well, how were you -- was your morning drive show
22 doing vis-a-vis the morning drive show of WBYT
23 competitively?

24 A Which time? Before or after Bob and Tom?

25 Q Before.

1 A I really can't say. I don't know what their
2 ratings were at that time because I wasn't programming the
3 oldies format, so I wouldn't have that information.

4 Q Well, how was your show, your morning pre-Bob and
5 Tom, how was your show doing vis-a-vis WAOR, my client's
6 show?

7 A Bob and Tom?

8 Q No, pre-Bob and Tom.

9 A Prior to that?

10 Q Yes.

11 A Again, I really don't know. I don't know what the
12 ratings were like back then. I know we weren't number one or
13 number two. That's all I could say.

14 Q Well, I guess my ultimate question comes out of
15 this, Mr. Turner, if I can call you that.

16 Why was -- when you recommended Bob and Tom, you
17 made that recommendation to Mr. Britten, correct?

18 A No. I said it in a conversation I had with Mr.
19 Kline one time.

20 Q Okay, Mr. Kline. I'm sorry.

21 When you made the recommendation to Mr. Kline, he
22 had dual responsibilities at the time, correct?

23 A I would assume so, yes.

24 Q Now, why was the Bob and Tom Show, which was very
25 popular, I'm taking, even if it might not have been in

1 southern Indiana, although you would tell me it's all over
2 Indiana; wouldn't you say that?

3 A I would guess that they pretty much have the
4 entire state covered because they -- they started out in
5 Indianapolis. I think their first affiliate was Fort Wayne,
6 and then like Bloomington, Lexington, Kentucky. They just
7 kind of surround the whole state.

8 Q Well, why wasn't the Bob and Tom Show appropriate
9 for WBYT?

10 A I can't say. That wouldn't have been my decision
11 to make.

12 MR. CRISPIN: No further questions.

13 JUDGE CHACHKIN: Any redirect?

14 MR. HALL: No, Your Honor.

15 JUDGE CHACHKIN: You're excused. Thank you.

16 THE WITNESS: Thank you.

17 (Witness excused.)

18 JUDGE CHACHKIN: Do you have another witness?

19 MR. HALL: Your Honor, next on our schedule is
20 going to be Mr. Moore, who is out of town, and he's not
21 coming in until this evening. I guess there has been some
22 discussion about moving Mr. Tannenwald from tomorrow up to
23 today.

24 MR. GUZMAN: Yes, Your Honor. We have arranged
25 for Mr. Tannenwald to testify beginning after lunch if

1 that's okay with you.

2 JUDGE CHACHKIN: All right, we'll be in recess
3 until 1:30.

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25 A F T E R N O O N S E S S I O N

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1 (1:30 p.m.)

2 JUDGE CHACHKIN: Back on the record.

3 Do we have another witness?

4 MR. GUZMAN: We do, Your Honor. Pathfinder calls
5 Peter Tannenwald.

6 JUDGE CHACHKIN: All right. Please raise your
7 right hand?

8 Whereupon,

9 PETER TANNENWALD

10 having been first duly sworn, was called as a witness herein
11 and was examined and testified as follows:

12 JUDGE CHACHKIN: Please be seated.

13 DIRECT EXAMINATION

14 BY MR. GUZMAN:

15 Q Good afternoon, sir.

16 Would you state your name your name for the
17 record?

18 A Peter Tannenwald.

19 Q Mr. Tannenwald, what's your profession?

20 A I'm an attorney.

21 Q When did you graduate from law school?

22 A 1967.

23 Q Where did you attend school?

24 A Harvard Law School.

25 Q What was your first job out of law school, sir?

1 A A first year associate with Aaron, Fox, Kendall,
2 Plotkin & Kahn, a law firm here in Washington.

3 Q How long did you work at Aaron Fox?

4 A Twenty-seven years; until December 31, 1994.

5 Q What did you do at that time?

6 A I left and joined the firm of Irwin Campbell,
7 which is now Irwin, Campbell and Tannenwald.

8 Q What would you say the focus of your legal
9 practice has been over the years?

10 A Federal Communications Commission most
11 exclusively.

12 Q So how many years would you estimate you've been
13 doing communications-related work?

14 A Thirty-one.

15 Q Are you a member of any communications-related
16 professional organizations or groups?

17 A Federal Communications Bar Association.

18 Q Anything else?

19 A Directly communications related, Broadcast
20 Pioneers. I think those are the two things personally. My
21 law firm is an associate members of the National Association
22 of Broadcasters.

23 Q Let's talk specifically about the nature of your
24 communications practice.

25 Do you focus on any particular sub area within the

1 communications field?

2 A I try not to be too focused. Over the years, it's
3 varied. I've spent 15 or 20 years doing maybe two-thirds to
4 three-quarters of broadcasting, and then I spent some years
5 doing two-thirds telephone work.

6 Q Just as a rough estimate, in the late eighties,
7 early nineties, how much time did you spend doing broadcast-
8 related work?

9 A I would say two-thirds to three-quarters.
10 Telephone work was mostly the early eighties.

11 Q How many broadcast-related transactions have you
12 been a part of?

13 A What is a transaction.

14 Q Buying or selling of broadcast property, giving
15 advice in connection with that.

16 A Probably somewhere between 50 and 100.

17 Q What kinds of properties were these?

18 A Radio stations, AM and FM stations, and low-
19 powered television stations primarily, with a few full-
20 powered television stations.

21 Q How many radio stations would you say you've
22 represented during the course of your career?

23 A Two to three hundred.

24 Q How many assignment applications would you say
25 you've had a part of over the course of your career?

1 A One hundred to 150.

2 Q Did there come a time in your experience when you
3 started to represent Mr. John Dille?

4 A Yes.

5 Q When was that?

6 A That was in the spring of 1989.

7 Q Could you describe for us how it is that you came
8 to represent John Dille in 1989?

9 A Yes. Mr. Dille was the president of Pathfinder
10 Communications Corporation, and his company had filed an
11 application for a construction permit to change the
12 transmitter site of WCUZ-FM, Grand Rapids, Michigan. The
13 application was denied by the Commission because of short
14 spacing, and Mr. Dille came to me to see if I could help re-
15 figure or reconstruct that application to get it granted.

16 One of the areas that I had some reputation being
17 expert in was technology-related matters, so he thought I
18 could do that for him.

19 Q Since that time, in 1989, how many other occasions
20 have you had to represent Mr. Dille?

21 A Well, we were successful with the WCUZ-FM
22 application, and shortly after that he started to come to me
23 with broadcast transactions, the purchase and sale of
24 stations, and I would say we did somewhere, 10 or 12
25 stations from early nineties to the mid-nineties.

1 Q How many of those transactions took place while
2 you were still over at Aaron Fox?

3 A Maybe seven, eight, nine, somewhere in there.

4 Q And then the remainder of them, I take it, took
5 place after you moved to Irwin Campbell & Tannenwald?

6 A That's correct.

7 Q Did there come a point in time when you were
8 representing Mr. John Dille that he asked you about a radio
9 station in South Bend, Indiana?

10 A Yes.

11 Q WRBR?

12 A Yes.

13 Q Tell us about that, please.

14 A Well, he used to call me up -- first, I should say
15 that most of the work relating to South Bend and Elkhart was
16 done by Alan Campbell, either at Dal Lomus and Albertson or
17 later with Irwin, Campbell & Crowe, which became my firm.
18 But John used to call and ask me questions about some of the
19 things he was doing, and he did call me once to tell me that
20 he had a joint sales agreement with a station in the South
21 Bend area that he was not permitted to own because of his
22 newspaper interest, and that station was being sold, and he
23 wanted to preserve the joint sales agreement.

24 And so he asked me about some arrangements that he
25 thought that he might be able to make to do that,

1 including -- he had been introduced to another broadcaster
2 who was willing to be the majority shareholder, and keep the
3 joint sales agreement in place.

4 He asked me if that was alright, and I told him I
5 didn't have any problem with that, particularly where it was
6 an experienced broadcaster who was as bona fide operator.

7 And then we probably has several conversation. He
8 asked me about his children investing in as minority
9 shareholders in the station. And I thought about that and I
10 felt that it was alright in any event because the interests
11 were permissible under the Commission's rules, particularly
12 where there was a 51 percent single majority shareholder. I
13 didn't have any trouble with that at all.

14 Later on he asked me about the money that his
15 children would invest in the station and whether he could
16 furnish that money in some way. And I had been involved in
17 some cases along there where that issue had come up, and so
18 I felt I really knew what the law was in that areas, and I
19 said, you know, there are cases starting with WLOX that say
20 that power follows money, and you're better watch out where
21 money comes from, but the Commission has consistently turned
22 the other when in cases where it's been money from the
23 parent to a child. And there have been many attacks on
24 those transaction, and they never win. The Commission
25 always says that it's a parent's prerogative to furnish

1 money to a child. So as far as I'm concerned, you can do
2 that. I really don't care how you do it.

3 I think he asked me one other question which
4 involved an option to acquire the station in the future.
5 I'm not sure whether for his children to acquire it or for
6 himself to acquire it or whatever, and I thought that was a
7 fairly routine question also because options are not
8 attributable interest, and I had done some work with people
9 who were clearly ineligible to hold broadcast interests and
10 we had created options and warrants and all kinds of things
11 for them with no problems under the Commission's rules.

12 So I said you can have all the options you want.
13 I don't know if you can exercise them, but that's a
14 different question. If you want to add that, go ahead.

15 Q Let me stop you for a second.

16 You said you had had these discussions over one or
17 more conversations?

18 A I'm sure it was more than one.

19 Q Tell is, if you can remember, when these
20 conversations took place?

21 A The best I could remember it would be somewhere
22 around the summer of 1993, maybe late spring, summer, or
23 early fall; somewhere in the middle of the year.

24 Q At this point in time were you aware that Alan
25 Campbell was also giving advice to Mr. Dille?

1 A Well, I was certainly aware that Mr. Campbell was
2 handling these -- whatever transaction was involved with
3 WRBR, and presumably he was giving advice. Whether he was
4 asked the same questions that I was asked or not, I don't
5 know.

6 Q Well, were you or was Mr. Campbell the principal
7 transactional lawyer with respect to WRBR?

8 A Mr. Campbell. I never saw the contract or
9 assignment application. I didn't work on those things. I
10 answered questions in phone conversations.

11 Q Do you know whether Mr. Dille followed the advice
12 that you gave him as you've just related to us?

13 A Well, I do now. At that time, no. I never really
14 clearly -- I think he said, "I'm going to do it. If you say
15 I can do it, I'm going to do it cause this is what I want to
16 do."

17 Q All right. Now, with respect to the advice that
18 you gave that Mr. Hicks could step into this joint sales
19 arrangement, is that advice that you would give today?

20 A Yes, I don't have a problem with that even, even
21 in light of this case, which is -- is not the outcome I
22 expected, I would still give that advice today.

23 Q And with respect to the advice that Mr. Dille's
24 children could hold a minority interest in the entity that
25 ultimately purchased WRBR, is that advice you would still

1 give today?

2 A Yes.

3 Q With respect to the advice that you gave that Mr.
4 Dille could provide the money so that his children could
5 make their investment relative to WRBR, is that advice you
6 would still give today?

7 A I would still give that advice today because the
8 only case that I'm aware of where that became a problem the
9 parent and child were involved daily in working together in
10 business transactions and were clearly a joint entity. In
11 the absence of that, I would give the same advice today.

12 Q Finally, with respect to the advice that you gave
13 that Mr. Dille's children could hold an option so that at
14 some point in the future purchase Hicks' share, is that
15 advice you would still give?

16 A I would still give that advice, cautioning the
17 client, as I have many times, that that option may not be
18 worth anything to you because I don't know if you can
19 exercise it, but you can certainly have it.

20 Q Based on your experience in the field, if an
21 assignment application contained an option or disclosed some
22 future interest, would that disclosure delay the granting of
23 the application?

24 A That's a hard to question to answer because it
25 depends on who is processing it on the staff. There are

1 some people who might pause on that, but the law to me is so
2 clear on it that I would have a little bit of short patience
3 of a staff member called me and started questioning it. I
4 would say, you know, "What are you talking about? This is
5 not a problem." Or, you know, at most we would file an
6 amendment where we would recite, maybe to make somebody on
7 the staff satisfied, we understand that this option could
8 not be exercised under the rules as they exist today, and we
9 would need a waiver or a rule change to exercise it. Maybe
10 that would make them more comfortable. It shouldn't be a
11 big delay.

12 Q Well, could you explain that? Why shouldn't it be
13 a big delay, in your opinion?

14 A Because it's not a complicated area of the law,
15 and if a staff member asked me that question, I wouldn't
16 have to think very long about what kind of an answer it
17 would be, and I could have an amendment like that to him in
18 two days.

19 The way the processing works once the staff person
20 asks questions, unless it's a particularly difficult area
21 that requires a lot of consideration by their supervisor, it
22 should go through in a few days.

23 Q A similar question, again based on your
24 experience, would the disclosing of -- in an application ,
25 would the disclosure of the fact that a parent is providing

1 funds to the child, so that the child could make his or her
2 investment in the radio station, would that disclosure cause
3 delay in the grant of an assignment application, in your
4 experience?

5 A Well, it certainly shouldn't. I don't think it --
6 I don't think it would unless there was some other fact that
7 you haven't given me to put with it. That factor alone
8 should not.

9 MR. GUZMAN: I have no further questions at this
10 time.

11 JUDGE CHACHKIN: Cross-examination?

12 MR. SHOOK: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. SHOOK:

15 Q Mr. Tannenwald, my name is James Shook. I believe
16 we've spoken on the phone a few times, but I've never had
17 the please to meet you face to face.

18 A I know you face.

19 Q Okay. With respect to the advice that was -- that
20 you testified about that you provided to Mr. Dille, was the
21 advice, as well as the questions that resulted in the
22 advice, ever reduced to writing?

23 A No, or at least not that am able to find.

24 Q In order to help us perhaps with the timing, when
25 the advice might have been provided, are you aware of any

1 bills or invoices or statements generated from your
2 activities?

3 A There were many bills and invoices that were
4 generated during that time because I was working on a lot of
5 transactions for Pathfinder, and they're not in my
6 possession. They are in my former law firm's possession.

7 MR. SHOOK: No further questions.

8 JUDGE CHACHKIN: Mr. Crispin, do you have any
9 questions?

10 MR. CRISPIN: I have no questions for this
11 witness.

12 JUDGE CHACHKIN: Any redirect?

13 MR. GUZMAN: Briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. GUZMAN:

16 Q Would it be customary in your practice to reduce
17 advice you gave over the telephone to writing?

18 A I think the answer to that is no. The preparation
19 of file memos for every conversation, in my view, is just a
20 way to run the client's bill up. I would not necessarily
21 write a file memo unless I felt that I was going to be
22 questioned about the advice or the client would come back to
23 me later and say -- the client would put a twist on it and
24 say you said something you didn't say. If I think that's
25 going to happen, then I'm going to write a file memo about

1 it.

2 But these -- I didn't in these cases, and I have
3 looked and have not found any within the scope of where I
4 can look when I don't have all of the files. These were
5 pretty straightforward questions in established areas of
6 law, and I didn't feel that my questions would likely be
7 subject to misinterpretation because they were yes and no
8 answers. So I would normally not make a file memo of that.

9 Q Do you have any recollection of having made a file
10 memo with respect to the advice you gave Mr. Dille?

11 A I don't have any recollection of it. I don't see
12 any reason not to say that while I don't have the files, I
13 have some computer diskettes of the work that I did, and we
14 did search through those, and word searches did not disclose
15 any memos. So I made some effort to find a memorandum and I
16 didn't, but it doesn't surprise me.

17 MR. GUZMAN: No further questions.

18 JUDGE CHACHKIN: You're excused. Thank you.

19 THE WITNESS: Thank you.

20 (Witness excused.)

21 MR. BERNTHAL: Your Honor, I think there is a
22 scheduling problem, the first one.

23 JUDGE CHACHKIN: Well, what's the problem?

24 MR. BERNTHAL: I gather that Mr. Moore, who is the
25 next witness, is not in town as yet. He was expected to go

1 tomorrow. In the scheduling the anticipation was that Mr.
2 Giddens and Mr. Turner would occupy the whole day today.
3 They ended up occupying only the morning. And so we
4 revamped for a little while and got Mr. Tannenwald to come
5 in a day early. He's in town, of course, which made that
6 possible. We had expected that he would go tomorrow. But
7 now his testimony turns out to have taken about 10 minutes
8 instead of three hours or whatever it was. Mr. Moore is not
9 here. I don't think there are any other witnesses ready for
10 today.

11 MR. HALL: I think he had a business meeting and
12 he would not be able to arrive until this evening, so he'll
13 probably come this evening.

14 JUDGE CHACHKIN: Well, I'm willing to put up with
15 it today, but in the future I expect witnesses to be here.
16 I want this case concluded as quickly as possible. So I
17 don't want any more gaps. Have your witnesses here. And if
18 their witness is not here, we'll put on one of the
19 principal's, but we're going to move it along as quickly as
20 we can.

21 So we'll be in recess until nine a.m. tomorrow.

22 (Whereupon, at 1:50 p.m., the hearing was
23 recessed, to resume at 9:00 a.m., Tuesday, November 3,
24 1998.)

25

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HEARING DATE: November 2, 1998
LOCATION: Washington, D.C.

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